

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THOMAS S. DRANGER and
MAUREEN E. DRANGER,

Plaintiffs,

Case No. 1:10-cv-268

v.

HON. JANET T. NEFF

INDIANA MICHIGAN POWER COMPANY
and ASPLUNDH TREE EXPERT COMPANY,

Defendants.

MEMORANDUM OPINION

This case arises out of alleged wrongful tree cutting by Defendants in violation of Michigan law. Plaintiffs initially filed suit in Michigan state court, and Defendants sought removal, alleging diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) (Defs. Not. of Removal, Dkt 1 ¶ 5). Plaintiffs now seek to remand the case back to state court (Pls. Mot. to Remand, Dkt 10). Plaintiffs note that Defendant Indiana Michigan Power Co. indicated in its original Answer that it was in fact a Michigan corporation (*id.* ¶ 3; Ans. ¶ 2). Plaintiffs therefore contend this action was not properly removable because one of the defendants is a “citizen of the State in which the action is brought” (Pls. Br. ¶ 3 (quoting 28 U.S.C. § 1441(b))).

Defendant Indiana Michigan Power Co. responded to Plaintiffs’ Motion by filing an Amended Answer, correcting its original Answer and stating that it is in actuality an Indiana Corporation (First Am. Ans. ¶ 2). Defendant Indiana Michigan Power Co. then filed an Answer to

Plaintiffs' Motion to Remand, acknowledging that its original answer was in error and reiterating that it is an Indiana corporation (Dkt 12 ¶¶ 2-4).¹

The Court finds that Defendant Indiana Michigan Power Co.'s Amended Answer is consistent with the representations that it made in the Petition for Removal stating "Defendant Indiana and Michigan Power Company is an organization incorporated in the State of Indiana, with its principle [sic] office in Fort Wayne, Indiana (Dkt 1 ¶ 4(c))." Defendant Indiana Michigan Power has sufficiently documented to the Court's satisfaction that diversity of citizenship exists based on its Indiana citizenship.

Accordingly, diversity jurisdiction exists, and Plaintiffs' Motion to Remand is therefore denied.

DATED: May 24, 2010

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge

¹ The documentation that Plaintiffs submit to the contrary (*see* Pls. Reply, Dkt 17 Ex. A) is not persuasive as it does not reflect Defendant Indiana Michigan Power Co.'s current status.